1949. File No. Evacuees II/49
Legal Deptt

P 9F

B. BRANCH

Subject:— Rules under the

Bombay Evacuees Bill 1949

355-B.

File No. Evacuees II/49.

Gen. 194

Legal Department.

The definition of " evacuee " in the Dhlhi Evacuees Property Bill is not wide enough to bring within its purview a person who has left Delhi for any place outside Delhi but within the Dominion of India. The Bombay Evacuees (Administration of Property) Bill, 1949, which has been recently passed by both Houses of the Legislature defines "evacuee " so as to bring within its ambit such persons. This provision was specially inserted at the instance of the Home Department to provide for cases which have occurred in Godhra.

2. Clause 2 (e) (ii) of the Delhi Evacuees Bill which contains the definition of " evacuee " refers to the personal supervision of property or business etc. It will be necessary to define "personal supervision" so as to include supervision by agents or servants under the personal supervision of the evacuee. The Bombay Bill referred to above has done so. In clause 14 of the Delhi Evacuees Bill reference is made to occupancy rights in lands. Obviously in framing this clause the tenure peculiar to Delhi alone has been taken into account. It is presumed that while enacting the all India Ordinance, tenures peculiar to other Provinces will also be taken into account.

3. The Delhi Evacuees Bill defines inter alia an " evacuee " as a person who leaves or has on or after the first day of March 1947 left the Province of Delhi for a place outside India. The date on which or after which he has left Delhi is according to the definition the first day of March 1947, Clause 17 of the Bill, however, makes transfers by sale, gift, mortgage etc. of any right or interest in any property made on or after the 15th day of August 1947 ineffective. Since the definition of an

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evacuee refers to the first day of March 1947 as the crucial date, it is but appropriate that transfers made after that date should be made ineffective and not transfers made after 15th August 1947.

4. The all India Ordinance will aboviously repeal the Evacuee laws of the other Provinces. The Government of India will no doubt make in the repealing clause suitable saving provisions.

Sd/- J.R.Dhurandhar,
20/4.

Additional Secretary to Government.

U.R. to Relief and Rehabilitation Department, No.252-Confl.

dated the 21st April 1949.

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Legal Department.

Revised draft rules are sent herewith.

2. Under sub-section (3) of section 28 of the Bombay Evacuees (Administration of Property) Act, 1949, the rules are required to be published for inviting objections and suggestions. The necessary amendment has accordingly been made at the beginning of the revised draft notification.

3. Sub-~~xxx~~ rules (1) and (2) of rule 4 and sub-rule (6) of rule 9 of the R.D. draft have been recast for the sake of clarity.

Sd/- J.R.Dhurandhar,
17/5.

Additional Secretary to Government.

U.R. to Rehabilitation Department, No.6773, dated the 18th June 1949.

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Legal Department.

Paragraph (a) of Deputy Secretary's note. -

Sub-Section (2) of section 4 of the Bombay Evacuees (Administration of Property) Act, 1949, as added by the Ordinance empowers the Custodian from time to time to notify evacuee properties ~~xxx~~ which have vested in him under the Act either by publication in the Official Gazette on in such other manner as may be prescribed. What is required under this sub-section is the alternative manner in which the notification shall be published (e.g.in newspapers). Rule 2 at slip 'A' as drafted by the Department does not provide for this. Until this alternative manner is settled publication in the Bombay Government Gazette will be perfectly legal. It is not necessary to lay down in the Rules the form of notification. The Notification to be issued under section 4(2) should not contain any column stating the rights vested in the Custodian for it will be difficult to ascertain at the time of the Notification which rights vest in the Custodian. Such a statement regarding rights might lead to unnecessary complications.

2. Paragraph (b) of Deputy Secretary's note :

The provisions of new sub-section (2) of section 10 are quite sufficient and no rule in this behalf is necessary as stated by the Deputy Secretary, Rehabilitation Department.

3. Paragraph (c) of Deputy Secretary's note :

Sub-section (1) of section 11-A gives powers to the Custodian to terminate leases of evacuee property. Under sub-section (2) on such termination the Custodian can demand surrender of possession of the property. Sub-section (3) provides that if any person ~~xxx~~ fails to surrender possession the Custodian may eject the person and take possession of the property in the manner provided in section 6. The Department

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has suggested the forms of demand and of the ejection order under sub-sections (2) and (3) respectively. However as stated by the Deputy Secretary, Rehabilitation Department, no rules prescribing these forms are necessary. It is neither necessary to demand possession of the property in any particular form nor to issue an ejectment order in the form as proposed. The draft rules as at 'B' do not appear to be necessary.

4. (i) Paragraph (d) of Deputy Secretary's note: In place of the draft rule at flag 'C' proposed under new section 14 of the Act a revised draft rule is sent herewith. Rehabilitation Department sub-rule (1) requires the application to be presented in person. Perhaps it is necessary to provide for forwarding the same by registered post for the convenience of those who cannot come personally. Sub-rule (2) requires publication in a "daily newspaper". presumably what is intended is publication in a local newspaper where the property is situate. The revised rule provide for both these matters.

(ii) It is presumed that the Rehabilitation Department intends that the manner in which provision should be made for the recovery of the amount due should be the serving of notice to the person concerned.

5. The form of the certificate to be issued by the Provincial Government or the authorised officer under the proviso to sub-section (1) of section 14 is also sent herewith.

Sd/- J.R. Dhurandhar,
5/7.
Additional Secretary to Government.

U.O.R.to Rehabilitation Deptt. No.7462 dated the 5th July 1949.

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Draft rule under section 14.

(1) An application for restoration of any evacuee property under section 14 shall be made in writing, bearing a court-fee stamp as required by the Court-fees Act, 1870, and supported by an affidavit duly attested by a Magistrate. The application shall be accompanied by a certificate from the Provincial Government or any person authorised by the Provincial Government in this behalf as prescribed in the proviso to sub-section (1) of section 14. The application shall be presented in person or sent by registered post to the Custodian or to any other person authorised by him in writing in this behalf.

(2) A Public notice of such application shall be published in a local newspaper having circulation in the area in which the property is situated at the expense of the applicant.

(3) The inquiry under sub-section (2) of section 14 shall be held in the manner prescribed for inquiries under section 7 of the Act.

(4) Before an order for restoration is made, the Custodian shall deliver or cause to be delivered to the person in whose favour the order for restoration is made, a notice requiring that person to pay such sum as may be due to the Custodian in respect of the property or the management thereof. The notice shall state the time within which the sum due to the Custodian shall be paid to him.

(5) The certificate from the Provincial Government or from the person authorised under the proviso to sub-section (1) of section 14 shall be in Form.....

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GOVERNMENT OF BOMBAY.

Certificate.

Whereas an application has been made by.....
for the restoration of the evacuee property
specified below and whereas the Provincial
Government is satisfied that the said .....*.....
..... is an evacuee / is the heir of an evacuee ; This is
to certify that the said property may be restored
to the said applicant if he is otherwise entitled
to it.

* Here insert the name of the authorized officer, if any.

Description of the property.

Secretary to Government.
Signature of authorised officer.

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LEGAL DEPARTMENT.

In the first column of the two notifications, it will be desirable to describe the property by the survey number and Municipal numbers. Such description actually appears in the schedule to the sale - deed which is in the papers. But that description should be verified from the Collector. In view of the contentions raised by Abdul Kadir, it is not desirable to say 'belonging to or held by jointly.'

Sd/- J.R. Dhuramdhar,
27/7.

Additional Secretary to Government,

U.R. to Rehabilitation - tation Department, No.8530,

dated the 27th July 1949.

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4/6.

Legal Department.

The statement made in the opinion at page 3 ~~xxxx~~ that if an evacuee returns he is entitled to the return of his property is not incorrect. It is true that new section 14 of the Act which has been substituted for the original section by Ordinance No.II of 1949 does not in terms refer to the return of an evacuee to the Province. But it cannot be denied that the new section provides that on return the evacuee will be ordinarily entitled to the return of his property subject of course to the condition that he produces in support of his application for restoration of the property a certificate from the Provincial Government or the authorised person. As stated in the ~~xxxxxxxxxxxxxxxx~~ Rehabilitation Department note at page 1, in the present case the person in question is at present in Bombay and is in a position to supervise or occupy his property. Although it is possible to hold that by reason of his opting out for service in Pakistan and subsequent stay in Karach he is an evacuee it would be desirable in this case to wait till he leaves Bombay and takes his residence in the Pakistan again and then take steps for notifying his property under the sub-section (2) of section 4 of the Act.

Sd/- J.R.Dhurandhar,
29/7.
Additional Secretary to Government.

U.R. to Rehabilitation Department No.478-Confl.

Dated the 30th July 1949.

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4/8.